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FISCAL IMPACT STATEMENT

LS 7064

BILL NUMBER: SB 328

NOTE PREPARED: Feb 11, 2010

BILL AMENDED: Feb 1, 2010

SUBJECT: Various Financial Institutions Matters.

FIRST AUTHOR: Sen. Paul

FIRST SPONSOR: Rep. Bardon

BILL STATUS: CR Adopted - 2nd House

FUNDS AFFECTED: X GENERAL
X DEDICATED
FEDERAL

IMPACT: State & Local

Summary of Legislation: This bill makes various changes to the laws concerning: (1) financial institutions; (2) debt management companies; (3) pawnbrokers; (4) money transmitters; (5) check cashers; (6) persons licensed under the Uniform Consumer Credit Code (UCC Code); (7) first lien mortgage lenders; and (8) rental purchase agreements. The bill also makes various changes to the laws concerning licensing residential mortgage loan creditors and originators to comply with requirements of the federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008.

The bill also repeals provisions being superseded by this bill. It repeals provisions under the Uniform Consumer Credit Code concerning the following: (1) A definition index. (2) Revocations of certain licenses. The bill also repeals a provision requiring the display of a license by a debt management company. It also repeals a provision concerning reverse mortgage loans made by savings associations and replaces the provision with requirements for reverse mortgage loans made by creditors in first lien mortgage transactions.

Effective Date: Upon passage; July 1, 2010.

Explanation of State Expenditures: *Summary:* The Department of Financial Institutions (DFI) would take on additional enforcement responsibilities under these provisions. Although the DFI could see an increase in expenditures, the bill would permit additional fees and civil penalties that could offset enforcement costs. The impact would ultimately depend on the number of additional enforcement actions taken by the DFI and the fee levels set annually by the DFI.

There could be some cost savings to DFI regarding DFI board membership meetings, the venue of administrative and judicial reviews, and exemptions from regulation for certain liquidations. Violation of

several of the new regulations would be subject to a Class A misdemeanor, which would affect state and local expenditures and revenues. Annual license renewals would be required of certain sectors, including debt management and specialized financial institutions.

Additional Information:

Potential Licensees: With the continual restructuring of the financial sector of the national economy, the number of potential entities that could require a license under this provision is indeterminable. The DFI would have to find out the number of entities that would require licensure, proceed with licensure, and begin inspections of new license holders.

Merging Out of Existence: The bill adds that DFI is authorized to approve dissolutions if a corporation intends to merge out of existence.

Staff: The DFI would have the ability under this bill to hire or retain additional staff (including attorneys) primarily for enforcement matters. The amount of expenditure this provision would require is indeterminable and would depend on the number of actions the DFI had to take to enforce the provisions within the bill.

Courses of Action: The bill would allow the DFI to initiate civil proceedings against a violator of the bill's provisions. The DFI could also suspend or revoke a license, assess civil penalties, or order restitution.

Nationwide Mortgage Licensing System and Registry (NMLSR): The bill would place the NMLSR as the automated central licensing system and repository to process applications and renewals. The Director of the DFI could request a national criminal history background check of an applicant. If so, the applicant would have to submit fingerprints to either the NMLSR, the Indiana State Police (ISP), or the DFI as the Director directs the applicant.

First Lien Mortgage Lenders: With respect to first lien mortgage lenders, the bill allows the Director of the DFI (DODFI) to remove a prohibited director, officer or employee, or impose a civil penalty of \$500 on a creditor per day for willfully permitting a prohibited person to serve a creditor. It provides for hearings and allows the DODFI to suspend or prohibit participation of a director, officer, or employee upon notice. It requires the DFI to maintain official records of these proceedings. The bill specifies that a final order by the DODFI may remove the director, officer, or employee, prohibit participation, or both. In addition, the DODFI may impose a civil penalty of up to \$15,000 per each practice, violation, or act. Assessed civil penalties would be deposited in the Department of Financial Institutions Fund. This enforcement power is extended to the director, officer, or employee of an affiliate in certain circumstances. The DFI may apply for relief to a court having jurisdiction, which could increase enforcement costs for the DFI.

Credit Unions: The bill makes changes to the types of investments a credit union may make, and it requires a credit union to divest stock or other equity investments received through loan default within a year. A credit union may rent excess space at a main office or branch as a source of income. The bill requires credit unions to maintain membership cards in the main office and the minimum information they must contain. It defines an illegal member and requires termination unless there is a loan outstanding, and it allows for trust members if the settler or at least one beneficiary is a member. A credit union must inform the DFI within 30 days of replacement of the chief executive officer. The bill specifies criteria for directors, supervisory committee members, and credit committee members, and makes the credit union board responsible for eight specific duties. Credit unions with assets of at least \$5 M (instead of \$10 M) will have annual audits performed by

an outside accounting firm. The bill allows credit unions to issue shares to and receive deposits from minors, and to receive state and federal funds. It changes the reserve requirements for credit unions and allows for the credit union board to terminate services to members in certain circumstances.

Other Regulations: The bill adds various requirements or prohibitions that could result in more examinations, enforcements, or administrative or judicial proceedings, which could increase costs for the DFI. The added regulations include: (1) Every lessor must keep records of all payments remitted by the lessor on a rental agreement. (2) The DFI may revoke licenses, or officers or other employees may be disqualified for any felony conviction (rather than felonies involving fraud, deceit, or misrepresentation). This applies to licenses for budget service companies, pawnbrokers, money transmitters, and check cashers. (3) A person licensed as a budget service company must notify the DFI within 30 days that a civil action has been filed.

Cost Savings:

Meeting of Members: The bill may reduce traveling expenses for meetings of the members. Under the bill, four members would have to be physically present at a meeting of the board. Other members would be allowed to participate using a means of communication that permits all of the members to simultaneously communicate with one another. A member who is not physically present may not cast a deciding vote on an official action.

Venue: The bill potentially reduces costs for the DFI by specifying that the location for administrative or judicial review is in Marion County. This provision is applied to the UCC Code, budget service companies, pawnbrokers, money transmitters, and check cashers.

Other Cost Savings: The bill could reduce costs for the DFI by providing an exception to regulation of the liquidation of financial institutions when the Federal Deposit Insurance Corporation is appointed the receiver. Potentially, the bill could reduce costs for the voluntary dissolution of banks, trust companies, and building and loan associations by subjecting undistributed shares to the unclaimed properties law. The bill exempts depository financial institutions and third-party bill paying services from provisions concerning budget service companies.

Background Information: *DFI Board-* The Financial Institutions Fund (FIF) receives all revenue for and pays the annual expenses of the DFI. The DFI Board has seven members who establish policy and procedure for the DFI and the director administering the DFI. Members who are not state officers receive an annual salary of \$4,000 a year plus travel and other expenses.

Financial Institutions Fund- During FY 2008, the fund received \$8.3 M and paid expenditures of \$8.24 M.

Explanation of State Revenues: *Summary:* This bill adds several provisions to statute that may increase state revenue from (1) fees, (2) civil penalties, and (3) criminal convictions. It is unknown to what extent state revenue will increase.

Additional Information:

Budget Service Companies: Budget service companies (BSC) would have various new responsibilities

including maintaining specific disclaimers, notifications, and agreements as given to customers and preparation of an annually renewable financial analysis. BSCs would also have to adhere to new permissible fees and certain prohibited acts. Violation of these new provisions would be punishable as a Class A misdemeanor. If additional court cases occur and fines are collected, revenue to both the Common School Fund (from fines) and the state General Fund (from court fees) would increase. The maximum fine for a Class A misdemeanor is \$5,000.

BSC Compliance Remedies: The DFI could order a BSC or its director to cease and desist from any violations, to order restitution, impose a civil penalty of not more than \$10,000 for each violation, or court action. The DFI may impose a civil penalty of up to \$20,000 if a person that is in violation of a final order. The DFI would be allowed to recover reasonable costs of enforcement.

Rental Purchase Agreements and Late Fees: A lessor would be prohibited from holding payments in a reserve account for future payments. Violations of this provision could result in additional civil actions or further penalties not exceeding \$1,000. The civil penalty amount for violations concerning rental purchase agreements would be raised from \$1,000 to \$10,000 per violation. The bill removes a \$5 per day fee for each day a lessor is late paying a notification fee. Instead, the DFI would be able to determine late fees on notification fees.

Financial Institution Excess Fees: The bill allows the DFI to impose a fee for the excess costs for examination of a financial institution that is not paid beginning 30 days after receipt of an invoice for the costs.

Pawnbrokers, Money Transmitters, and Check Cashers: The bill requires annual renewal of a pawnbroker license and a check casher license. It allows the DFI to impose a late fee as determined by the DFI (rather than \$5) for any renewal not received by June 1 for a pawnbroker. The bill makes an initial license for a money transmitter effective through March 31 rather than December 31.

Civil Penalties- Mortgage Loan Originators: A court could assign a civil penalty of not more than \$5,000 for willful violations of the bill by a mortgage loan originator. The DFI, in addition, could assess a civil penalty on the violator of no more than \$10,000 for each violation.

UCC Violations: The bill adds 15 acts that violate the UCC Code, including: directly or indirectly employing any scheme, device, or artifice to defraud or mislead borrowers or lenders; engaging in any unfair or deceptive practice; and obtaining property by fraud or misrepresentation. These violations could be punishable via the methods and civil penalties as above for mortgage loan originators.

Civil penalties assessed by the Director are placed in the Financial Institutions Fund; Civil penalties imposed by the UCC generally go to the state General Fund or the Financial Institutions Fund.

Criminal Provisions: A person that engages in making subordinate lien mortgage transactions without a license would commit a Class A misdemeanor under current UCC law. Depository institutions, federally regulated depository institution subsidiaries, Farm Credit Administration (FCA) regulated institutions, or persons that have been licensed to make subordinate lien mortgages by the DFI would not be subject to this criminal provision.

If additional court cases occur and fines are collected, revenue to both the Common School Fund and the state General Fund would increase. The maximum fine for a Class A misdemeanor is \$5,000. Criminal fines

are deposited in the Common School Fund.

If the case is filed in a circuit, superior, or county court, 70% of the \$120 court fee that is assessed and collected when a guilty verdict is entered would be deposited in the state General Fund. If the case is filed in a city or town court, 55% of the fee would be deposited in the state General Fund. In addition, some or all of the document storage fee (\$2), automated record keeping fee (\$7), judicial salaries fee (\$18), public defense administration fee (\$3), court administration fee (\$5), judicial insurance adjustment fee (\$1), and the DNA sample processing fee (\$1) are deposited into the state General Fund.

National Criminal History Background Check: If more national criminal background checks occur, increased state revenues are expected to result. National criminal history background checks cost \$32.25. Of the \$32.25, \$17.25 is transferred to the federal government, and the remaining \$15 is deposited into the state General Fund.

Explanation of Local Expenditures: *Penalty Provisions:* A Class A misdemeanor is punishable by up to one year in jail. The average daily cost to incarcerate a prisoner in a county jail is approximately \$44.

Explanation of Local Revenues: *Criminal Provisions:* If additional court actions occur and a guilty verdict is entered, local governments would receive revenue from the following sources: The county general fund would receive 27% of the \$120 court fee that is assessed in a court of record. Cities and towns maintaining a law enforcement agency that prosecutes at least 50% of its ordinance violations in a court of record may receive 3% of court fees. If the case is filed in a city or town court, 20% of the court fee would be deposited in the county general fund and 25% would be deposited in the city or town general fund. In addition, several additional fees may be collected at the discretion of the judge and depending upon the particular type of criminal case.

State Agencies Affected: DFI.

Local Agencies Affected: Circuit or superior courts.

Information Sources: *Indiana Handbook of Taxes, Revenues, and Appropriations*; John Schroeder, Chief Counsel and Deputy Director DFI; Auditor of State.

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